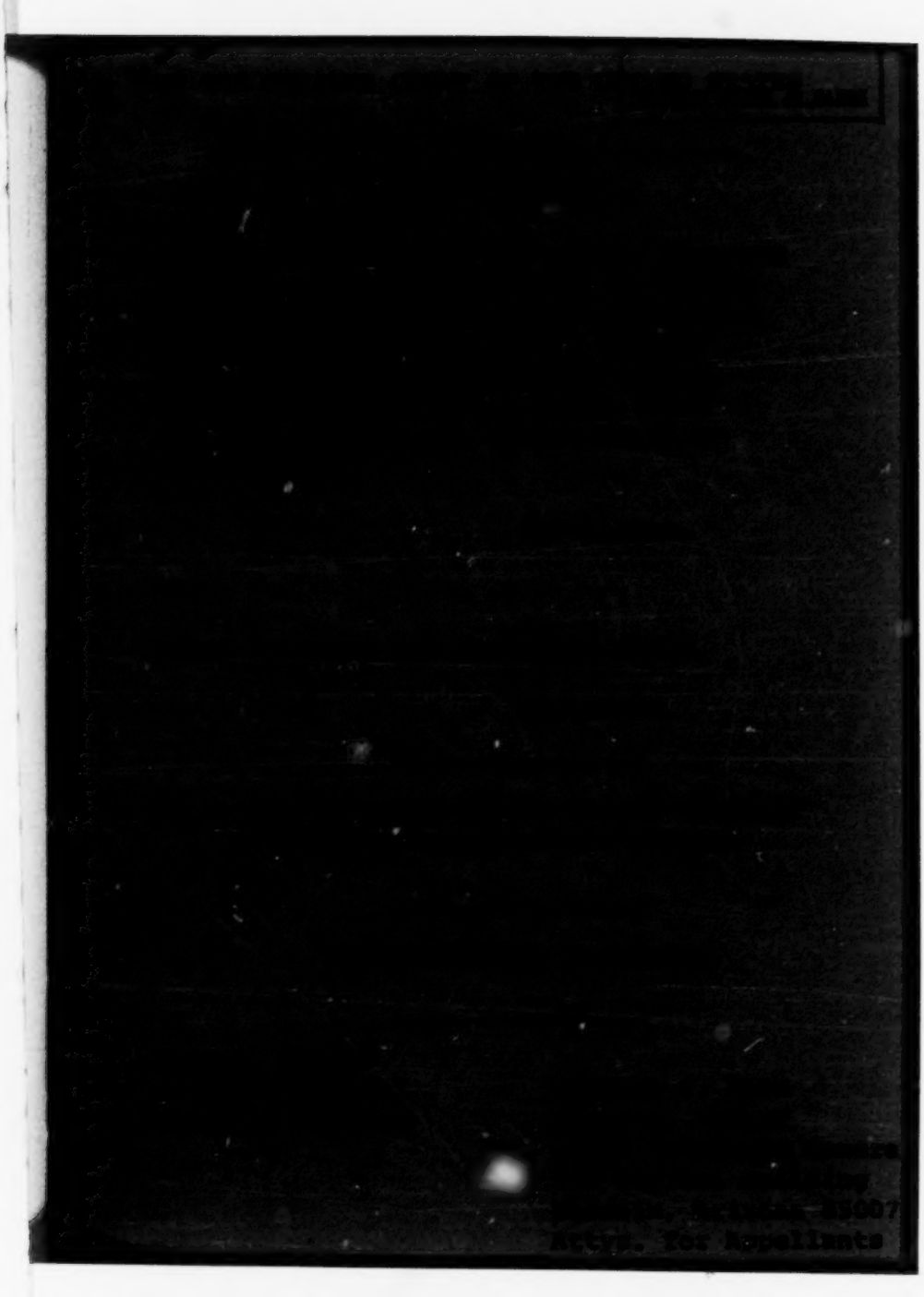

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972, NO. _____

PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; JACK WILLIAMS; & MARICOPA COUNTY BOARD OF SUPERVISORS,

Appellants,

-vs-

ANITA X. LEWIS and CATHERINE MANDT,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

JURISDICTIONAL STATEMENT

GARY K. NELSON
Attorney General
State of Arizona

MICHAEL S. FLAM
JAMES B. FEELEY
Asst. Attorneys General
159 Capitol Building
Phoenix, Arizona 85007
Attys. for Appellants

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1972

NO. _____

PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; JACK WILLIAMS; and MARICOPA COUNTY BOARD OF SUPERVISORS,

Appellants,

vs.

ANITA X. LEWIS and CATHERINE MANDT,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

OPINION BELOW

The opinion of the three-judge District Court has not yet been officially reported. A copy of that opinion and order is set forth as Appendix A.

JURISDICTION

This is an appeal from that part of the final order and judgment of the three-judge District Court declaring Arizona's durational residency and registration requirements unconstitutional and permanently enjoining the appellants from enforcing these requirements for all special, primary or general elections held subsequent to November 7, 1972.

Notice of appeal was filed on the 3rd day of November, 1972 in the United States District Court, District of Arizona. See Appendix B. This appeal is taken from the Court's final order filed and entered on the 22nd day of September, 1972. (Appendix A).

This Court has jurisdiction by virtue

of Title 28, U.S.C. § 1253.

STATUTORY PROVISIONS INVOLVED

A.R.S. § 16-101.3 Qualifications of Registrant

Every resident of the state is qualified to register to vote if he . . . will have been a resident of the state fifty days and of the county in which he claims the right to vote thirty days next preceding the election, except as provided in §§ 16-171 and 16-172.

A.R.S. § 16-107. Closing of registrations

A. No elector shall vote in a primary election unless he

has been registered to vote prior to five o'clock p.m. of the fiftieth day preceding the date of such primary election.

B. No elector shall be registered to vote between five o'clock p.m. of the fiftieth day preceding a general election and seven o'clock p.m. of the day thereof, except as provided in §§ 16-171 and 16-172.

C. No elector shall vote in a special primary, special general, special recall or other special election unless he has been registered to vote prior to

five o'clock p.m. of the fiftieth day preceding the date of such special election.

QUESTION PRESENTED

Do Arizona's registration requirements violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution insofar as they establish that all eligible electors be residents of the State and register to vote by the fiftieth day prior to all special, primary or general elections involving offices other than President and Vice President of the United States held subsequent to November 7, 1972?

STATEMENT OF THE CASE

This action stems from a complaint by Anita X. Lewis, Deputy Registrar for

Meadows Precinct, Maricopa County, State of Arizona, seeking injunctive relief restraining defendants from closing the registration of electors more than thirty days prior to the general elections of November 7, 1972. The complaint also seeks a declaration that A.R.S. §§ 16-101 and 16-107 (Supp. 1972) are unconstitutional insofar as these statutes close registration of electors fifty days prior to any special, primary, or general election. Catherine Mandt, a resident of Maricopa County, State of Arizona since August 13, 1972, was added as a plaintiff the day after registration of electors was closed, by amended complaint filed on September 19, 1972. Defendants are the County Recorders of Arizona's fourteen counties who are

charged with enforcing Arizona election statutes, A.R.S. § 16-101, et seq. (Supp. 1972).

The Maricopa County Board of Supervisors was permitted to intervene by oral stipulation under Rule 24 of the Federal Rules of Civil Procedure. A three-judge court was convened and a hearing held pursuant to 28 U.S.C. § 2284. All evidence and law having been presented to the Court, the parties orally stipulated that the panel could consider and decide not only the issue of temporary relief but also whether a permanent injunction should issue.

After hearing the uncontroverted testimony presented on behalf of the appellants, the Court filed its opinion and order on September 22, 1972 granting

the appellees a permanent injunction interdicting Arizona from closing registration more than thirty days prior to any election held subsequent to November 7, 1972. This order effects all elections involving the presidency, vice presidency, members of the Congress, state and local officials and all initiative and referendum questions.

THE QUESTION IS SUBSTANTIAL AND JURISDICTION SHOULD BE NOTED

When any aspect of an important state statute is declared unconstitutional by a Federal Court, the issue can hardly be said to be anything but substantial. Similarly, whenever a three-judge Federal District Court enjoins the enforcement of a significant state statute, and the only appeal from that order is

to this Court, the issue is of grave import to the federal-state relation. The question in this case is far too significant for the holding of the District Court to be both the first and final word on the matter. A question of this magnitude deserves at least one appellate review.

Statutes providing for appeals directly to this Court are intended by Congress as a procedural protection against "an improvident state-wide doom, by a federal court, of a state's legislative policy" whether "such policy is defined in a state constitution [or] in an ordinary statute . . . ." Phillips v. United States, 312 U.S. 246, 251 (1941). The present case is the precise situation to which this procedural protection

speaks. This Court can provide the necessary protection by noting jurisdiction.

It is well settled that one of the most important factors to be taken into consideration in determining the substantiality of a federal question presented to this Court on appeal is a conflict among the lower courts on the precise issue presented. State registration requirements exceeding thirty days have been upheld in Burns v. Forston, ___ F.Supp. ___ No. 17179 (N.D. Ga. 1972); Anderson v. Brown, 332 F.Supp. 1195 (S.D.Ohio W.D. 1971) and Jarmel v. Putram, 409 P.2d 603 (1972), ___ Col. ___; while similar provisions have been struck down in Hennant v. Sebesta, ___ F.Supp. ___ (U.S.D.C. M.Fla. 8/14/72),

Graham v. Waller, 343 F.Supp. 1 (S.D. Miss. 5/24/72) and Ferguson v. Williams, 343 F.Supp. 654 (D.C.Miss. 1972); Young v. Gnoss, 101 Cal.Rptr. 533, 496 P.2d 445 (1972), cert. denied ___ U.S. ___ (1972).

Arizona is not unique in requiring residents to register to vote by a specified date more than thirty days prior to an election. For example, Rhode Island closes registration a full two months before an election--Pennsylvania and Georgia have adopted a 50-day closing. A complete listing of states' closing registration in excess of thirty days prior to an election appears as Appendix C.

The District Court's decision will

have far reaching effects. States have the right to set voter qualifications, prevent voter fraud and to prepare administratively for an election. Mr. Justice Black remarked, "It is obvious that the whole constitution reserved to the States the power to set voter qualifications in State and local elections except to the limited extent the people through constitutional amendments specifically narrowed the power of the States." Oregon v. Mitchell, 400 U.S. 112, 125 (1970). The States' undisputed power to set registration requirements[1] has long been recognized by this Court. Mason v. Missouri, 179 U.S. 328

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[1]Except for the election of President and Vice President. 42 U.S.C. § 1973aa-1.

(1900); Wiley v. Sinkler, 179 U.S. 58 (1900).

Arizona's requirement that voter registration close fifty days before any election cannot be viewed separately from the fifty-day durational residency requirement set forth in A.R.S. § 16-101 as amended. If A.R.S. § 16-101 stated that a person must be a "resident" and excluded the fifty-day residency requirement, the result would be unchanged in light of A.R.S. § 16-107 as amended which establishes the fifty-day durational registration requirement. The uncontroverted testimony presented to the lower Court on behalf of the appellant demonstrates beyond doubt that fifty days is absolutely necessary to complete accurate registration records so that the maximum

number of eligible persons can exercise their fundamental right to vote. The lower Court found the appellants have met the "compelling interest" standard to sustain the constitutionality of the statutes in question for the November 7, 1972 General Election; but without facts or foundation found these same statutes unconstitutional in not meeting the standard for all elections held thereafter. This constitutes a distinction without a difference whereby an interest is declared to be compelling at one point in time yet insufficient at another despite indentical factual circumstances.

The Arizona statutes serve to prevent voter fraud and thereby insure that the electorates' voice is heard as clearly

and accurately as possible. This Court has recognized that preventing voter fraud is a state interest sufficiently compelling to justify registration restrictions. Dunn v. Blumstein, 405 U.S. 330 (1972). Congress has also recognized this interest in the 1970 Amendment to the Voting Rights Act of 1964, 42 U.S.C. § 1973aa-1(b). The thirty day pre-election registration cut-off is not an empirically arrived at standard. Neither does its appearance in 42 U.S.C. § 1973aa-1(d) render it a sacrosanct and immutable national standard. It appears only because Congress felt it a reasonable period of time for performing the administrative task incident to the Presidential and Vice Presidential election. Neither the statute nor its legis-

lative history indicate any broader application. 1970 U.S.Code, Congressional and Administrative News p. 3277. Arizona concedes the United States law governing the election of the President and Vice President preempts the state laws in question but the federal guideline cannot be extended to govern or take precedence over state and local elections. Oregon v. Mitchell, supra.

An examination of the evidence presented in the lower Court reveals without a doubt, that Arizona has met the compelling interest standard. Arizona's election procedures are a unique product of the Populist Era. For example, the state employs a voluminous volunteer deputy registrar system. A.R.S. § 16-141. In Maricopa County alone, there

are over 2,500 deputy registrars. This system provides ultimate convenience to the individual seeking to register but on a statistical average results in approximately 1.13 errors per voter registration card, thus requiring extensive verification and correction procedures to produce accurate poll lists. If these lists are not free of mistakes discouragement from voting on election day results in two ways. First, a registrant whose name does not appear on the precinct register where he has gone to vote may be required to go through a time consuming certification procedure which may entail a long trip to the County Recorder's Office. Second, since past experience indicates it takes approximately five minutes to certify a

voter whose name does not appear properly on a precinct register, the result is that persons already registered who are waiting to vote may be discouraged from voting due to inordinate delays at the polls. It is estimated that in Maricopa County some 4,400 registered voters might be denied the right to vote if county voter lists contain an error of 1%. Moreover, Arizona's Fall Primary, A.R.S. § 16-702, causes a backlog in processing registrants for the general election. In most states, primaries are held earlier. To further complicate matters, the election of school trustees is set at the same time as the general election (A.R.S. § 15-471) even though school districts do not geographically correspond to voter precincts.

The testimony of Mr. William S. Truman, Reporter's Transcript of Proceedings, September 8 and 9, 1972, pp. 23-62, 70-87 and of Mr. Paul N. Marston, Reporter's Transcript of Proceedings, September 8 and 9, 1972, pp. 96-150, Reporter's Transcript of Proceedings, September 11, 1972, pp. 12 through 74 further amplify with detail the necessity of Arizona's fifty-day durational registration requirement demonstrating a compelling state interest, namely orderly, accurate and efficient administration of state and local elections free from fraud.

CONCLUSION

The appellants find themselves in this dilemna: Unless the decision of the lower Court is reviewed by this Court, it will not be reviewed at all, and appellants will be left with a judgment and opinion which assures them that Arizona had a legitimate interest in following Arizona's election law for the November 7, 1972 General Election but not for subsequent elections, even though the circumstances remain unchanged.

It is respectfully submitted that the issue in this case is substantial and that the appellants are entitled to an appellate review of the lower Court's judgment. Accordingly, we urge that

jurisdiction be noted.

RESPECTFULLY submitted December, 1972.

GARY K. NELSON
The Attorney General

Michael S. Flam
James B. Feeley
Asst. Attorneys General
159 Capitol Building
Phoenix, Arizona
85007
Attorneys for
Appellants

APPENDICES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ANITA X. LEWIS and CATHERINE MANDT, Plaintiffs, vs. PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; and JACK WILLIAMS, Defendants, and MARICOPA COUNTY BOARD OF SUPERVISORS, Intervening Defendant.	NO. CIV-72-481-PHX-CAM OPINION AND ORDER

This action stems from a complaint by Anita X. Lewis, Deputy Registrar for Meadows Precinct, Maricopa County, State of Arizona, seeking injunctive

relief restraining defendants from closing the registration of electors earlier than thirty days prior to the general election of November 7, 1972. The complaint also seeks declaratory judgment declaring A.R.S. §§ 16-101, 16-107, 16-171 (Supp. 1972)[1/] unconstitutional insofar as these statutes close registration of electors more than thirty days prior to any special, primary, or general election and insofar as they established a fifty-day residency requirement. By amended complaint filed on September 19, 1972, the day after registration of electors was closed, Catherine Mandt, a resident of Maricopa County, State of Arizona since August 13, 1972, was added as a plaintiff.

Defendants are the fourteen County Recorders for the Counties of the State of Arizona, and are charged with enforcing Arizona election statutes, A.R.S. § 16-101, et seq. (Supp. 1972). Members of the Board of Supervisors of Maricopa County were permitted to intervene by oral stipulation under Rule 24 of the Federal Rules of Civil Procedure. This three-judge court was convened and a hearing was held pursuant to 28 U.S.C. § 2284. By oral stipulation between all parties, it was agreed that, all evidence and law having been presented to the Court on the matters in issue, this Court could consider and decide not only the issue of temporary relief but also whether a permanent injunction

should be issued.

Plaintiffs contend first, that the Federal Voting Right Act of 1970, specifically 42 U.S.C. 1973aa-1 (Supp. 1972)[2/] requires the State of Arizona to keep registration for the presidential election open until the 30th day before the election. Also, plaintiffs argue that the fifty-day residency requirement of A.R.S. § 16-101(3) is in violation of the Equal Protection Clause of the Fourteenth Amendment as an infringement on the right to vote and the right to travel. For this argument, plaintiff relies heavily on Dunn v. Blumstein, 402 U.S.____, 92 S.Ct. 995, 31 L.Ed. ____(1972), wherein Tennessee's one-year state and three-month county

durational residency requirements were struck down as unecessary (sic) to further a compelling state interest.

Defendants challenge plaintiff Lewis' standing to bring suit claiming that, as a deputy registrar, plaintiff has suffered no injury in fact entitling her to maintain this action. On the merits, defendants contend that there is a compelling state interest for the fifty-day requirement in that it enables the various defendants to provide poll lists that are accurate, up-to-date, and free of fraud.

Standing As An Issue

While defendants' contentions as to plaintiff Lewis' standing may be meritorious, though we do not decide whether

they are not, any contentions that plaintiff Mandt does not have standing is without merit. Plaintiff Mandt, being otherwise qualified under Arizona statutes to be registered as an elector except for the fact that she had not been registered prior to the fiftieth day preceding the general election scheduled for November 7, 1972 even though she had been a resident of Maricopa County since August 13, 1972, clearly is affected by the defendants' enforcement of A.R.S. § 16-107B. Plaintiff Mandt, therefore, has standing to contest the Arizona elections statutes and to be a proper plaintiff in this suit. Standing, therefore, is not an issue in this case.

November 7, 1972 Election As It Pertains to Presidential And Vice Presidential Electors

It is a fundamental concept of constitutional law that where a state statute is in conflict with a properly enacted Act of Congress, the state statute is of no effect. U.S. Const. Art.VI, § 2. The validity of the durational residency requirement of the Voting Rights Act of 1970, 42 U.S.C.A. § 1973aa-1, has been upheld as within the authority of Congress. Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.ed. (sic) 272 (1970). The Voting Rights Act, however, requires that state law allow for registration of electors up to not later than thirty days

immediately prior to any election of president and vice president only.[3/] As to the registration requirement for electing other officers, the Federal Act is silent. There being no conflict between state and federal law as to the election of officers other than president and vice president, the result is that A.R.S. §§ 16-101, 16-107, and 16-172 are invalid only insofar as they require registration for the election of the president and vice president prior to thirty days before any presidential election and are, therefore, in conflict with 42 U.S.C.A. § 1973aa-1.

We must look to other considerations to determine whether a durational residency requirement of more than thirty

days may be applied to electors for the other offices.

November 7, 1972 Election As It Pertains To Electors Of Offices Other Than President And Vice President

> Dunn v. Blumstein, supra, requires that: /D/urational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are "necessary to promote a compelling governmental interest." Shapiro v. Thompson, supra, 394 U.S., at 634 (emphasis added); Kramer v. Union Free School

District No. 15, supra, 395 U.S., at 627, 89 S.Ct., at 1889.

405 U.S. at _____, 92 S.Ct. at 1003, 31 L.Ed. at _____.

From the evidence presented to this Court by way of testimony, affidavits, and stipulations by the parties, it is evident that insofar as the general election scheduled for November 11, 1972 (sic is concerned, the State has met the Blumstein standard by showing a compelling state interest in requiring registration by the fiftieth day prior to the general election for residents of the State of Arizona of more than fifty days.[4/]

This conclusion is reached by

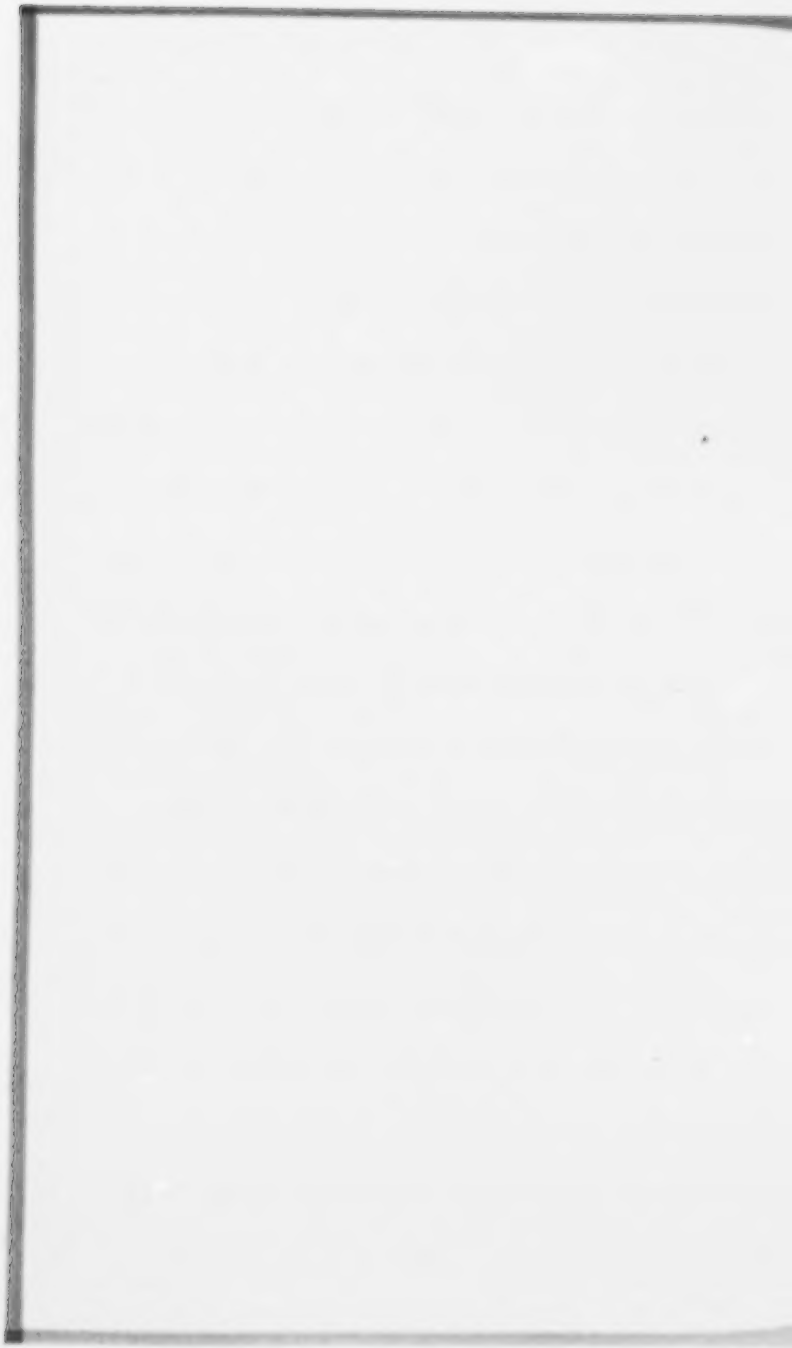
balancing the citizen's right to participate in elections with the State's interest in conducting an orderly election free from fraud, or from delays in voting at the polls on election day. While there is no question that the right of franchise balances heavily on the scales of justice, Evans v. Cornman, 398 U.S. 419, 90 S.Ct. 1752, 26 L.Ed. 370 (1970), there is also little question that to impose a thirty-day registration requirement on the State at this late date may work to create a situation impossible of orderly administration at the polls. Where there is too little time before a scheduled election for state officials to implement orderly changes in voter registry and residency

requirements,[5/] such changes should not be imposed. See Young v. Gnoss, ____ Cal.2d____, 101 Cal.Rptr. 533, 496 P.2d 445 (1972).

In considering this question it is obvious from the evidence presented that Arizona election procedures are unique. Maricopa County, for example, is possibly the only system in the country to utilize volunteer deputy registrars spread over so wide a geographic area. Added to the deputy registrar system (which it was testified produces on the average 1.13 mistakes per vote registered in Arizona's most populated county) is the fact that throughout the State, there is a late, fall primary which this year was held on September 12.*

*In many, if not most states, primaries are held earlier.

The procedure used in Maricopa County to rid voter lists of the mistakes caused by the deputy registrar system requires technically trained personnel using a combination of manual and computer processes. Processing is required to produce voter lists relatively free of mistakes. If "clean" lists (meaning a list as free from mistakes as possible) are not produced, the effect is that properly registered voters may be discouraged from voting on election day. This discouragement results in two ways. First, a registrant whose name does not appear on the precinct register where he has gone to vote may be required to go through a time-consuming certification procedure which may entail a long trip



to locations other than the precinct where he originally reported. Second, since past experience indicates that it takes approximately five minutes to certify a voter whose name does not appear properly on a precinct register (if in fact certification can be done at the local precinct) and since the certification procedure under statute[6/] requires the presence of election officials who are also required to process properly registered voters, the net result is that persons already properly registered who are waiting in line to vote may be discouraged from voting due to inordinate delays at the polls. Though it is of course not known how many persons may be discouraged from

voting, it is estimated that in Maricopa County alone, some 4400 registered voters might be denied the right to vote if the county voter list is in error by only one percent.

Testimony based on prior experience suggests that in Maricopa County at this time under present conditions, at least forty-five days are required to make a voter list as free from error as possible. This fact, combined with the fact that an unpredicted number of voters have registered in 1972 in a re-registration of all voters in the State pursuant to A.R.S. § 16-150D (Supp. 1971-72), and the fact that a backlog in processing registrants has been caused by the cleansing of voter

lists for the primary election of September 12, 1972, and the fact that there are administrative problems for the 1972 election in that under A.R.S. 471 (Supp. 1972), the election of school trustees is to be set the same time as the general election even though school districts do not geographically correspond to voter precincts, justifies the conclusion at this late date that as to election for offices other than president and vice president, for the general election of November 7, 1972 the state has a compelling interest in maintaining its current election procedure.

Elections To Be Held After November 7, 1972

For elections occurring after Novem-

ber 7, 1972, however, the State has demonstrated no compelling interest in maintaining the classifications of A.R.S. §§ 16-101, 107, 172 between residents of over fifty days and residents of from thirty to fifty days.

In urging that the State has a compelling interest in the aforementioned classification, the State argues primarily that the combination of a deputy registrar system in its most populace county in addition to fall primaries necessitate registration fifty days prior to an election to free the voting lists of mistakes. This in turn, it was argued, would assist in preventing voter fraud. The exact method by which fraud is curtailed by the fifty-day

requirement was unexplained, however. In fact, it was pointed out that "clean" voter lists do nothing to eliminate the source of any potential fraud which is falsely verifying to one's residence.

Another major assertion as a reason for the fifty-day residency and registry requirements is that the State has an interest in a speedy election process at the polls. In refutation to this argument, plaintiffs contend that delays at the polls are caused not solely by mistakes in the voter lists, which currently take at least forty-five days to compile with accuracy, but also by other administrative procedures which could be eliminated. While it is not the intent of this Court to indulge in

a lengthy discourse on the manner in which a state should enforce its election laws, suffice it to say that when means less drastic than the fifty-day cut off are available to enforce election laws which do not unnecessarily discriminate against a class of voters, these alternative means should be used.[7]

Reasons for as short a durational residency requirement as possible have been adequately stated by Congress.[8] Additionally, the Supreme Court has declared that a thirty-day durational residency requirement seems to be ample time for a state to complete whatever administrative tasks are necessary to prevent fraud. Dunn v. Blumstein, supra, 405 U.S. at 1006, 92 S.Ct. at ____,

31 L.Ed. at ____. Indeed, the State of Arizona has established a procedure to permit new residents of from thirty to fifty days to vote for president and vice president. Furthermore, the fact that at least forty states have residency requirements of from fifteen to thirty days between the close of voting rolls and election day is evidence of the fact that appropriate administrative procedures can be developed to satisfy at least a thirty-day requirement. Hearings on S.818, S.2456, S.2507 & Title IV of S.2029 Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary, 91st Cong. 1st & 2nd Sess. 289 (1970). Other state and federal cases have likewise reduced

the length of state residency requirement. See Hinnaut v. Sebesta, ____ F.Supp.____(41 U.S.L.W. 2100 M.D. Fla., decided August 14, 1972 (abolishing a sixty-day state requirement); Ferguson v. Williams, 343 F.Supp. 654 (N.D. Miss. 1971) (eliminating a four-month closing date); Young v. Gnoss,____Cal.2d____, 101 Cal. Rptr. 533, 496 P.2d 445 (1972) (shortening a ninety-day requirement to thirty days).

The conclusion is insurmountable that, since the State has presented no facts demonstrating a compelling interest in maintaining a fifty-day residency and registration requirement for election of officers other than president and vice president beyond the election

set for November 7, 1972, enforcement of the contested statute must be enjoined. We are certain that the State, given sufficient time, can and will make the necessary changes in laws, budgets, administration, and personnel to meet a thirty-day deadline for registrations for all residents instead of the present fifty-day requirement for residents here more than fifty days.

For the foregoing reasons, we therefore find the requirement of A.R.S. §§ 16-101(3), 16-107(A)(B)(C), and 16-172(A) are unconstitutional insofar as they establish a residency requirement of "fifty days" and insofar as they establish a registration requirement prior to "the fiftieth day preceding" the date

of the election specified in the referenced statutes.

Considering the foregoing matters,

IT IS ORDERED that defendants open registration for electors of president and vice president for the general election of November 7, 1972 as provided in 42 U.S.C. 1973aa-1 (Supp. 1972), and

IT IS FURTHER ORDERED that for all special, primary, or general elections held subsequent to November 7, 1972, the durational residency and registration requirements of the State of Arizona be not more than thirty days preceding said elections.

DATED this 22 day of September, 1972.

/s/Stanley Barnes
Circuit Judge
/s/C. A. Muecke
United States District Judge
/s/Wm. P. Copple
United States District Judge

FOOTNOTES

1/ /Reference on page 27

Insofar as pertinent, these statutes are set forth:

§16-101. Qualifications of registrant

Every resident of the state is qualified to register to vote if he:

* * *

3. Will have been a resident of the state fifty days and of the county in which he claims the right to vote for thirty days next preceding the election, except as provided in §§ 16-171 and 16-172.

* * *

§ 16-107. Closing of registrations

A. No elector shall vote in a primary election unless he has been registered to vote prior to five o'clock p.m. of the fiftieth day preceding the date of such primary election.

B. No elector shall be registered to vote between five o'clock p.m. of the fiftieth day preceding a general

election and seven o'clock p.m. of the day thereof, except as provided in §§ 16-171 and 16-172.

C. No elector shall vote in a special primary, special general, special recall or other special election unless he has been registered to vote prior to five o'clock p.m. of the fiftieth day preceding the date of such special election. As amended Laws 1958, Ch. 48, § 1; Laws 1970, Ch. 151, § 5; Laws 1972, Ch.218, § 5).

§ 16-172. Eligibility of new resident to vote

A. A person who has been a resident of this state for more than thirty days but less than fifty days prior to the date of a presidential election shall be entitled to register not later than thirty days immediately prior to such election and to vote in person at the office of the county recorder or by absentee ballot in the precinct in which he is registered for presidential electors in such election, but for no other offices. The application for voter registration of a new resident shall be accompanied by the affidavit prescribed in § 16-143.

* * *

C. Following the election at which

the new resident has so voted, and upon completing the residency requirements for becoming an elector qualified to vote in all elections, his affidavit of registration shall be placed in the general county register. Added Laws 1962, Ch. 1, § 1, as amended Laws 1964, Ch. 58, § 1; Laws 1972, Ch. 218, § 16.

2/ /Reference on page 2/

42 U.S.C. 1973aa-1 (Supp. 1972) provides in part:

(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or

political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven

days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing the polls in such State on the day of such election.

See Footnote 8, infra.

3/ /Reference on page 47
See note 2, supra.

4/ /Reference on page 57

See A.R.S. §§ 16-107 and 16-172. Footnote 1.

5/ /Reference on page 67

The complaint in this case was filed on September 1, 1972; the motion for a temporary restraining order and motion to convene a three-judge panel were heard on September 7 and 8, 1972; the three-judge panel was convened and oral argument was had on September 11, 1972; and the parties were given until September 18, 1972, which is the fiftieth day preceding the general election of November 7, 1972, to file memoranda.

6/ /Reference on page 7/

A.R.S. § 16-921 et. seq.

7/ /Reference on page 9/

It should be noted for the offices of president and vice president, that if the state utilizes the procedure set forth in A.R.S. § 16-172A, supra, Footnote 1, it has an established method to process registrants who have been residents of the state for more than fifty days.

8/ /Reference on page 9/
Findings of the Congress from 42 U.S.C. 1973aa-1 are expressed in part:

(a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections--

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;
(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;
(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;
(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and
(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

APPENDIX B

GARY K. NELSON
The Attorney General
Michael S. Flam and
James B. Feeley
Assistant Attorneys General
Phoenix, Arizona 85007
Telephone: 271-5208 or 5881
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ANITA X. LEWIS and CATHERINE MANDT, Plaintiffs, vs. PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; and JACK WILLIAMS, Defendants, and	NO. CIV-72-481-PHX-CAM NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

MARICOPA COUNTY BOARD OF SUPERVISORS,

Intervening Defendant.

I

Notice is hereby given that all the above named defendants hereby appeal to the Supreme Court of the United States from the Part of the final order and judgment of this Court in favor of the plaintiffs and against the defendants dated and entered on the 22nd day of September, 1972 which states:

> IT IS FURTHER ORDERED that for all special, primary, or general elections held subsequent to November 7, 1972, the durational residency and registration requirements of the State of Arizona be

not more than thirty days preceding said elections.

II

This appeal is taken pursuant to Title 28 U.S.C. § 1253.

III

The Clerk will please prepare a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the reporter's transcript of testimony and oral argument.

DATED this 3rd day of November, 1972.

GARY K. NELSON
The Attorney General

/s/Michael S. Flam and

/s/James B. Feeley
Assistant Attorneys General
Attorneys for Defendants

PROOF OF SERVICE

I, Michael S. Flam, attorney for the above named defendants-appellants herein, and a member of the Bar of the Supreme Court of the United States, certify that on the 3rd day of November, 1972 I served copies of the foregoing notice of appeal on the plaintiffs-appellees by mailing copies in duly addressed envelopes with first-class postage prepaid to their attorneys of record as follows:

Jack Levine, Esquire
Attorney at Law
1400 Arizona Title Building
Phoenix, Arizona 85003

James P. Walsh, Esquire
Attorney at Law
First National Bank Plaza
100 West Washington
Phoenix, Arizona 85003

/s/Michael S. Flam

APPENDIX C

STATES' CLOSING REGISTRATION IN EXCESS OF 30 DAYS PRIOR TO AN ELECTION

STATE	TIME PERIOD	CITATION
California	53 days	West's Ann. Election Code § 203
Colorado	32 days	Colo.Rev.Stat. Ann. 49-4-2
Georgia	50 days	Ga.Code Ann. 34-611, 34-625
Hawaii	45 days	Hawaii Rev. Stat. 11-13
Maryland	5th Mon. prior*	Md.Ann.Code Art.33 § 3-8(a)
Michigan	5th Friday prior*	Mich.Stat. Ann. 6.1497
Mississippi	4 months	Miss.Code Ann. 14-3235
Montana	40 days	Mont.Rev.Code Ann. 23-513 as amended
Nevada	5th Sat. prior*	Nev.Rev.Stat. 293.560(1)

New Jersey	39 days	N.J.Stat.Ann. § 19:31-6.1
New Mexico	42 days	N.M.Stat.Ann. 3-48(A)
Pennsylvania	50 days	Penn.Stat.Ann. Title 25, 951-16
Rhode Island	60 days	R.I.Gen.Laws Ann. § 17-9-3

*to an election

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-899

PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; JACK WILLIAMS; & MARICOPA COUNTY BOARD OF SUPERVISORS,

Appellants,

v.

ANITA X. LEWIS AND CATHERINE MANDT,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

MOTION TO AFFIRM

LEWIS & ROCA

By John P. Frank
James P. Walsh
100 West Washington Street
Phoenix, Arizona 85003

Attorneys for Appellees

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-899

PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; JACK WILLIAMS; & MARICOPA COUNTY BOARD OF SUPERVISORS,

Appellants,

v.

ANITA X. LEWIS AND CATHERINE MANDT,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

MOTION TO AFFIRM

TABLE OF AUTHORITIES

Cases:	*Page*
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Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969)	2
Young v. Gnoss, 7 Cal. 3d 18, 101 Cal. Rptr. 533, 496 P.2d 445 (1972)	2,1a
cert. denied, 41 U.S.L.W. 3207 (1972)	2,1a
Statutes:	
Ariz. Rev. Stat.:	
§ 16-101, Supp. 1972-73	2
§ 16-107, Supp. 1972-73	2
Haw. Rev. Stat.:	
§§ 11-24, 12-2 (1972 Supp.)	1a
Md. Ann. Code Art. 33 § 3-8(a)	1a
Mich. Stat. Ann. § 6.1497	1a
Mont. Rev. Code 1947 Sec. 23-3016 (1971 Supp.)	1a
Nev. Rev. Stat. 293.560(1)	1a
Other:	
42 U.S.C.A. § 1973aa-1 (Supp. 1972)	2
U.S. S. Ct. Rule 16, 28 U.S.C.A.	1

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-899

PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; JACK WILLIAMS; & MARICOPA COUNTY BOARD OF SUPERVISORS,

Appellants,

v.

ANITA X. LEWIS AND CATHERINE MANDT,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the district court be affirmed on the ground that the question raised on appeal is so unsubstantial as not to need further argument.

STATEMENT

A three judge district court held that Arizona's 50 day durational residence requirement (A.R.S. § 16-101, Supp. 1972-73) and an Arizona law (A.R.S. § 16-107, Supp. 1972-73) cutting off registration for voting 50 days before special, primary and general elections are unconstitutional. However, it permitted these statutes to be applied in 1972 because of the lateness of the ruling in relation to the general election held November 7, 1972. For all future elections, it required a maximum 30 day residency requirement and the use of a 30 day cutoff. The State appeals.

ARGUMENT

1. The trial court properly applied the "compelling state interest" test, *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) as applied in *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) to voter registration. The decision accords with the general policy of the Federal Voting Rights Act of 1970, 42 U.S.C.A. § 1973aa-1 (Supp. 1972), and with the forty states which apply registration periods of 30 days or less; see opinion below and citations therein.* The decision accords not only with *Dunn v. Blumstein, supra*, but also with *Ferguson v. Williams*, 343 F. Supp. 654 (N.D. Miss. 1972) (eliminating a four-month closing date); *Young v. Gnoss*, 7 Cal. 3d 18, 101 Cal. Rptr. 533, 496 P.2d 445 (1972)

---

*Appellants suggest that several states cut off registration of voters considerably more than 30 days prior to election. (Appendix C. Jurisdictional Statement). Appellees list the exact number of days for those states for which appellants list longer time periods. See Appendix "A" to this motion.

cert. denied, 41 U.S.L.W. 3207 (1972) (shortening a 90 day requirement to 30 days); and *Hinnant v. Sebesta*, 346 F. Supp. 913 (M.D. Fla., 1972) (abolishing a 60 day state requirement.)

2. The State's claim to have shown a compelling interest, said by it to be based on peculiar dictates of Arizona history or of local administration, is purely factual. The trial court very carefully and expressly considered those factual assertions, based on the record before it, and stated:

> "The conclusion is insurmountable that, since the State has presented no facts demonstrating a compelling interest in maintaining a fifty-day residency and registration requirement for election of officers other than president and vice president beyond the election set for November 7, 1972, enforcement of the contested statute must be enjoined. We are certain that the State, given sufficient time, can and will make the necessary changes in laws, budgets, administration, and personnel to meet a thirty-day deadline for registrations for all residents instead of the present fifty-day requirement for residents here more than fifty-days."

The court properly reached the conclusion that no compelling interest exists, and there is no showing that its conclusion was without foundation.

CONCLUSION

The appellants present no substantial question for the decision of this Court and the judgment and decree of the court below should be affirmed.

Respectfully submitted,
LEWIS AND ROCA

By John P. Frank
James P. Walsh

January, 1973. Attorneys for Appellees

APPENDIX A

State	Time Period Between Closing Registration and General Election	Authority
California	30 days	*Young v. Gnoss*, 7 Cal. 3d 18, 101 Cal. Rptr. 533, 496 P.2d 445 (1972) *cert. denied*, 41 U.S.L.W. 3207 (1972)
Hawaii*	25 days	Haw. Rev. Stat. §§ 11-24, 12-2 (1972 Supp)
Maryland	29 days	Md. Ann. Code Art. 33 § 3-8(a)
Michigan	32 days	Mich. Stat. Ann. § 6.1497
Mississippi	30 days	*Ferguson v. Williams*, 343 F. Supp. 654 (N.D. Miss., 1972)
Montana	30 days-federal election 40-days-other elections	Rev. Code. Mont. 1947 Sec. 23-3016 (1971 Supp.)
Nevada	31 days	Nev. Rev. Stat. 293.560(1)

*Five days after primary election held on *first Saturday* of October; in 1972, this period was 25 days.

PROOF OF SERVICE

I, JOHN P. FRANK, attorney for the above named plaintiffs-appellees herein, and a member of the Bar of the Supreme Court of the United States, certify that on the____ day of January, 1973, I served copies of the foregoing Motion to Affirm on the defendant-appellants by mailing copies in duly addressed envelopes with first-class postage prepaid to their attorneys of record as follows:

GARY K. NELSON
Attorney General
State Capitol
Phoenix, Arizona 85007

MICHAEL S. FLAM
JAMES B. FEELEY
Assistant Attorneys General
159 Capitol Building
Phoenix, Arizona 85007

Attorneys for Appellants

_____

John P. Frank

SUBSCRIBED AND SWORN TO before me this ____ day of January, 1973.

/s/ Edwina Price

Notary Public

My commission expires:
March 31, 1975

MARSTON ET AL. v. LEWIS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. 72–899. Decided March 19, 1973

Arizona's 50-day durational voter residency and registration requirements as applied to other than presidential elections *held* constitutionally permissible, in light of Arizona's special problems arising from the State's legitimate needs to correct registrations accomplished by volunteer personnel and to interrupt registration work to take care of activities occasioned by its fall primaries.

Reversed.

PER CURIAM.

Fourteen county recorders and other public officials of Arizona appeal from a judgment of a three-judge district court holding the State's 50-day durational voter residency requirement and its 50-day voter registration requirement unconstitutional under the decision in *Dunn* v. *Blumstein*, 405 U. S. 330 (1972).[1] A permanent injunction was entered against enforcement of these or any other greater-than-30-day residency and registration requirements in any election held after November 1972. Appellants do not seek review of the District Court's judgment insofar as it enjoins application of the 50-day requirements in presidential elections. See Voting Rights Act Amendments of 1970, 84 Stat. 316, 42 U. S. C. § 1973aa–1.[2] Appellants assert, however, that the re-

[1] The requirements appear, respectively, at Ariz. Rev. Stat. Ann. §§ 16–101 (3) and 16–107. These provisions were enacted after our decision in *Dunn* v. *Blumstein*.

Appellees are a deputy registrar in Maricopa County and a resident of Maricopa County.

[2] Section 1973aa–1 withstood constitutional attack in *Oregon* v. *Mitchell*, 400 U. S. 112 (1970).

quirements, as applied to special, primary, or general elections involving state and local officials, are supported by sufficiently strong local interests to pass constitutional muster. We agree and reverse.

In *Dunn* v. *Blumstein*, we struck down Tennessee's durational voter residency requirement of one year in the State and three months in the county. We recognized that a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot. States have valid and sufficient interests in providing for *some* period of time—prior to an election—in order to prepare adequate voter records and protect its electoral processes from possible frauds. A year, or even three months, was found too long, particularly in the context of "the judgment of the Tennessee lawmakers," who had set "the cutoff point for registration [at] 30 days before an election . . . ." 405 U. S., at 349. The Arizona scheme, however, stands in a different light. The durational residency requirement is only 50 days, not a year or even three months. Moreover, unlike Tennessee's, the Arizona requirement is tied to the closing of the State's registration process at 50 days prior to elections and reflects a state legislative judgment that the period is necessary to achieve the State's legitimate goals.

We accept that judgment, particularly in light of the realities of Arizona's registration and voting procedures. Those procedures, apparently first adopted during the Populist Era, rely on a "massive" volunteer deputy registrar system. See Ariz. Rev. Stat. Ann. § 16–141. According to appellants' testimony, although these volunteers make registration convenient for voters, they average 1.13 mistakes per voter registration and the county recorder must correct those mistakes before certifying to

the "completeness and correctness" of each precinct register. Ariz. Rev. Stat. Ann. § 16–155. The District Court itself noted that there were estimates that "in Maricopa County alone, some 4,400 registered voters might be denied the right to vote if the county voter list is in error by only one percent."

An additional complicating factor in Arizona registration procedures is the State's fall primary system. The uncontradicted testimony demonstrates that in the weeks preceding the deadline for registration in general elections—a period marked by a curve toward the "peak" in terms of the registration affidavits received—county recorders and their staffs are unable to process the incoming affidavits because of their work in the fall primaries. It is only after the primaries are over that the officials can return to the accumulated backlog of registration affidavits and undertake to process them in accordance with applicable statutory requirements.

On the basis of the evidence before the District Court, it is clear that the State has demonstrated that the 50-day voter registration cutoff (for election of state and local officials) is necessary to permit preparation of accurate voter lists. We said in *Dunn* v. *Blumstein* that "[f]ixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much." 405 U. S., at 348. In the present case, we are confronted with a recent and amply justifiable legislative judgment that 50 days rather than 30 is necessary to promote the State's important interest in accurate voter lists. The Constitution is not so rigid that that determination and others like it may not stand.

The judgment of the District Court, insofar as it has been appealed from, is

Reversed.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN concur, dissenting.

In *Dunn* v. *Blumstein*, 405 U. S. 330, 348 (1972), just last Term, we held that a 30-day residency requirement provided the State with "an ample period of time . . . to complete whatever administrative tasks are necessary to prevent fraud" in the process of voter registration. We made that judgment in light of the facts that Congress had made a similar judgment as to presidential and vice-presidential elections, 42 U. S. C. § 1973aa–1 (a)(6), that roughly half the States had periods of similar length, 1972–1973 Book of the States 36–37 (as of time of decision), and that the evidence needed to determine residency was relatively easy to find. The District Court, after hearing evidence about the administrative burdens in Arizona, found that appellants needed no longer than 30 days to complete the same tasks. I find nothing in the record that leads me to conclude that this judgment was erroneous.

The Court relies on two factors to justify the longer period. First, Arizona's volunteer registrar system is said to result in so many errors th their correction requires 45 days. But these errors occur only because the deputy registrars are inadequately trained and the central supervision of the data-control process is not well organized. The District Court found that "*under present conditions*, at least forty-five days are required to make a voter list as free from error as possible" (emphasis added). This justified its refusal to enjoin the operation of the statute as to the election held in November 1972. But appellant Marston's testimony was directed almost exclusively to what can only be considered readily

solvable problems caused by untrained personnel in a relatively small office. Appellants presented no evidence that improvements in the administration of the deputy registrar system, including earlier recruitment and better training of deputy registrars and of data-processing personnel in the central offices, could not be adopted before the next election. If, as we held in *Dunn*, the State "cannot choose means which unnecessarily burden or restrict constitutionally protected activity," and if the State must carry "a heavy burden of justification," 405 U. S., at 343, surely it must show that it cannot, by better administration, eliminate the errors that justified a 50-day period in 1972. The District Court, in my view, correctly concluded that "the State has presented no facts demonstrating a compelling interest" in its 50-day requirement.

The second "complicating factor" is said to be the burden on county recorders caused by the need to interrupt the processing of affidavits filed by new registrants in order for them to work on the fall primaries. Here too the appellants showed no need to use small staffs. It is by no means obvious that the recorders' staffs could not be increased temporarily to deal with this "complication." Certainly that is a method of processing affidavits which less seriously burdens the right to vote. "And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference." *Dunn* v. *Blumstein*, *supra*, at 343.

In addition, appellants have established a system to register voters for presidential and vice-presidential elections, in compliance with the requirement of 42 U. S. C. § 1973aa–1 (d), that no State may impose a residency requirement of greater than 30 days for such elections. In Arizona, those voters who qualify for presidential and vice-presidential elections, but not for state elections,

are given absentee ballots. This eliminates the necessity to prepare a separate list of registration lists. Any administrative problems caused by the inability to correct misspellings, to alphabetize the lists, and to determine in which precinct the voter lived—the only difficulties which appellants mentioned in their testimony*—could be eliminated by similar treatment of late registrants for all elections. And if these voters did not have to appear at the polls, the fears of deterring other voters by delays at the polling places would disappear.

Even if the evidence below established that the administrative burdens of a 30-day limitation on general registration could not possibly be removed, that would not itself justify the same limitation on registration of newly arrived voters. General registration requirements affect every voter in the State. Durational residency requirements affect a much smaller class of potential voters, and the burdens of registering the members of that class will therefore be significantly smaller. Further, general registration requirements, with which any otherwise eligible voter may comply if he acts with sufficient diligence, might be thought to impair less substan-

*Appellant Marston testified that there would be difficulty in locating the proper precincts and school districts for each registrant. Again, this pertains exclusively to the election in 1972, because of several nonrecurring facts: the State had recently "cleansed" its voting lists, dropping everyone from the rolls and requiring reregistration of every voter; the State had just been redistricted; and a statute rescheduling school board elections caused transitional problems. Difficulties in determining the proper precinct for each voter could be eliminated by a simple reprograming of the computer used by the registrars. Now the computer simply indicates an error if the address and the precinct entered on the registration form by the registrars are inconsistent; it would not be difficult for a programer to have the computer itself find the proper precinct. And, as appellant Marston testified, his task would not be difficult at all if he used an "on-line" system of processing the cards through the computer rather than the present "batch" system.

tially the right to vote than do durational residency requirements, which bar a newly arrived voter from any participation in the elections. Serious administrative problems might justify the less severe impairment, but a total bar to participation can be justified only by administrative problems of the highest order.

In short, the evidence produced below abundantly supports the District Court's conclusion that appellants had failed to carry the heavy burden of justifying the 50-day limitation period in light of reasonably available and less restrictive alternatives. If this Court has drawn a line beyond which reliance on administrative inconvenience is extremely questionable, as we did in *Dunn*, we can avoid an unprincipled numbers game only if we insist that any deviations from the line we have drawn, after mature consideration, be justified by far more substantial evidence than that produced in the District Court by appellants. I would therefore affirm the judgment of the District Court.